G. R. S. IX-5]

Previous references.

Preserve
6/2/24
1913.-14
(Persia)

File No. 35-13

Serial Nos. (Nil)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. (Nil)

Part B for October 1917

SUBJECT.

Reformatory treatment to habitual Criminals.

W D 88—GPB—50,000—24-7-16

Abdur Rahman
20.12.17

Jails 4000

1913-14

GENERAL AND REVENUE SECRETARIAT.

(Prisons)

NOTES.

File No. 35-1.

FILE HEADING.

Reformatory treatment of habitual criminals.

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

General and Revenue Secretariat. | Prisons File No. 35 of 1913-14

Serial No.

Extract from the notes and orders in Courts File No. 276-12 relating to the memorial for mercy of convict Dhoroop Rao convicted of theft and sentenced to 8 years' rigorous imprisonment.

× × × × ×

× × × × ×

× × × × ×

× × × × ×

"When as in this case, a man is again and again caught in the commission of the same offence, it may safely be presumed that there is something radically wrong in his mental constitution, that renders him incapable of taking warning and reforming his character. Such people deserve reformatory treatment more than a punitory one. They should be kept under condition which deprive them of the opportunity of indulging in their criminal propensity. Either it may be ordered that they should be kept in a place where they are set to work under restraint or left to the care of those who will stand surety for their good

Serial No.

conduct. I am not sure that there are provisions in the jail rules, to treat such people after the adequate punitory period, as less than prisoners under rigorous imprisonment. If there are not, it is worth making such rules. They may be employed as ordinary labourers in what they are fit for, and made to earn their own living and make such profits as they may be entitled to; and they should not be put in chains and should be treated as far as possible as under simple imprisonment. x x x xxx.

I shall feel obliged if the Secy (Jud.) will examine the jail rule and report whether any amelioration in the manner proposed is admissible

x x x x x x x

(Sd.) H.V.R.

x x x x

" Subd. There do not seem to be any provisions in the Jail Manual to treat prisoners in the manner suggested by the 1st Councillor.

" The course suggested in para 5 is only possible if the prisoner is

General and Revenue Secretariat. | Pro File No. 35 of 1913-14

Serial No.

regarded as one who is sentenced to simple imprisonment, but who is to turn out some sort of work.

"When simple imprisonment prisoners express a desire to work, they will be allowed to do so but will not be entitled to any remuneration. Instead of this, they will be given the diet allowed to hard labour convicts (Vide Rule 215 of the Mysore Jail Manual & Rule 959 of the Madras Jail Code).

7LN
7LX

"As the treatment to be accorded in the case referred to is a special one, fresh rules may perhaps have to be framed.

Submd. for orders.

Con(2) K.V.(123)
14.5.13

"The suggestion made by the 1st Councillor is that the best way of dealing with 'habitual' offenders is to give them reformatory rather than 'punitory' treatment and that after the lapse of a certain period, they should be subjected only to the treatment accorded to prisoners sentenced to simple imprisonment.

"The present rules under

NOTE—Contn. sheet.

G.P.B.—60,000—7-11-13

General and Revenue Secretariat. | Pris File No. 3 5 of 1913 14

Serial No.

The Prisons Act do not allow of such treatment being accorded. When a prisoner is sentenced by Magte. to hard labour, the jail authorities have no option but to provide employment for him, with reference to his physical capability, aptitude and conduct (Jail Manual Rules 62 & the following Rules). There is no provision under the present rules to treat a rigorous imprisonment prisoner as less than such. This can be done only by framing fresh rules on the subject.

"The question as to the proper treatment of 'habitual' offenders in jails has been the theme of comment by the Inspector-Generals of Prisons in British India for the past few years. I went through these reports for about half a dozen years and the view generally held by them is that the treatment of habitual offenders should be more stringent than they are now, in the interests of society. The I.G. of Prisons Bombay in his report for 1909 says" The tendency

General and Revenue Secretariat. | Pris File No. 35 of 1913/14

Serial No.

throughout the world is to deal in a more deterrent manner with habituals. Prisoners in England now get an additional sentence, if proved habituals." The I.G. of Prisons, Madras, in his report for 1908 puts it thus:- "With the incurable criminal, there is only one rational way of dealing and that is, to keep him for the rest of his natural life" In the U. Provinces report for 1907 it is stated " The remedy seems to be to endeavour to increase the deterrent effect of jail life by making it as unpleasant as possible. More frequent combination of solitary sentence with rigorous imprisonment seems to be very desirable".

"This is the rule very generally taken in recent years in British India; and it is a point for consideration how far it is desirable or feasible to make prison life attractive to the hardened criminal classed as 'habituals' by lessening its rigours.

"If it is decided to adopt the suggestion that, after a certain

NOTE—Contn. sheet.

GPB—60,000—7-11-13

General and Revenue Secretariat. | Pols File No. 35 of 1913-14

Serial No.

period, an offender liable to hard labour should be treated as on the same terms as a sentence of simple imprisonment; fresh rules will have to be made under the Prisons Act.

× × × × × × ×

(Sd.) S. P. R.
3.7.13

× × × ×

"I had in mind something like the provisions of the Habitual Criminals Law of England concerning the detention of habitual criminals. I think the provisions are well worth copying.

"The enhanced punishment under section 75 of the Penal Code should take the form of punishment on the usual scale for the substantive offence, plus an additional term under the charge of being a habitual offender. The latter terms should take the forms prescribed in the new rules.

"I shall feel obliged if the Leg. Dept. will (1) consider whether these provisions can be introduced in the form of rules alone or (2) whether we should pass a regulation. In either case I should like to have

NOTE—Contn. sheet.

General and Revenue Secretariat. | Pro File No. 35 of 1913/14

Serial No.

a rough draft as early as possible. If necessary I shall be glad to discuss the subject personally before the draft is prepared.

(Sd.) H. V. N.
18.5.13

× × × × × × ×

× × × × × ×

" Subd. to His Highness.

× × × × × ×

× × × × × ×

" The question raised by the First Councillor in regard to the framing of a set of rules for the detention of habitual criminals will be separately dealt with.

(Sd.) M. Visvesvaraya
27th Nov 1913.

× × × × × ×

× × × × × ×

" Br III, Please see the last para of the Diwan's submission noted to H. H.

(Sd.) K. R. S.
6.12.13

" Br III, × × × ×

Please put up draft rules as per 1st Councillor's views early.

(Sd.) S. P. R.
8.12.13.

G P B—50,000—7-11-13

General and Revenue Secretariat. | Prisons File No. 35 of 1913-14

Serial No.

71 D
71 R

The provisions of English Law relating to habitual criminals are contained in Part II of the Prevention of Crime Act, 1908 (8 Ed. VII, ch 59) and the rules made by the Secy. of State. These provisions apply to persons who have had not less than three previous convictions. whereas section 75 of the I. P. C. extends to persons with even one previous conviction.

So far as the period of confinement is concerned the provisions of section 75 I. P. C. seem, except where transportation is awarded, to be more lenient than the provisions of section 10 of the Prevention of Crime Act, 1908, inasmuch as no minimum term has been fixed by the former while according to the latter the minimum term is 3 years' penal servitude and, if the court thinks fit, 5 years' Preventive detention.

If it is thought fit that persons with less than three convictions should be made liable to enhanced punishment but be more leniently dealt with than persons with three or more previous convictions, it is respect-

fully subd. that section 75 of the I.P.C. will have to be slightly modified and another section on the lines of section 10 of the Prevention of Crime Act be added as section 75A. The new sections 75 & 75A will then stand as:-

75. Whoever having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to imprisonment of either description for a term which may extend to ten years.

In this the words referring to transportation have been omitted

75A: Where a person who is found to have been convicted not less than three times, after attaining the age of 16 years, of an offence punishable under Chapter XII or XVII of this Code with imprisonment of either description for a term of three yrs or upwards, the Court, if of opinion that by reason of his criminal habits and mode of life it is expedient for the

protection of the public that the offender should be kept in detention for a long term period of years, may, in addition to the sentence awarded for the offence in questi pass a sentence ordering that he be further detained for such period not exceeding ten nor less than five years as the Court may determine and such detention will be termed 'Preventive Detention'.

If, however, it is thought that only persons with three or more previa convictions should be subjected to enhanc punishment, as under English Law, wha is indicated as Section 75A above may be substituted for the present Section 75 of the I.P.C.

A section on the lines of section 12 of the Prevention of Crime Act will have to be added to the Chapter in the Criminal Procedure Code relating to commuta tion of sentences. The following addition is suggested:-

402A. Where a person has been sentenced to rigorous imprisonment for a term of five years or upwards, and he appears to the Govt. to have been convicted not less than three times after

General and Revenue Secretariat. | Pris File No. 35 of 1913-14

Serial No.

attaining the age of sixteen years of an offence referred to in section 75A of the I.P.C. the Govt: may, if they think fit, at any time after three years of the term of rigorous imprisonment have expired, commute the whole or any part of the residue of the sentence to a sentence of preventive detention, so that the total term of the sentence when so commuted shall not exceed the term of rigorous imprisonment originally awarded.

The other provisions of the English law may be issued in the form of rules under the Prisons Act 1870. A set of draft rules is subd. for consideration.

Rules made by Govt.
under section 56 of the Prisons Act
1870, and section 401 of the
Criminal Procedure Code for pe
undergoing preventive detention.

Rule 16 of the
Rules under the
Prisons & Prevention
of Crimes Act.

These rules sh.
into force on the

2. Persons undergoing pre

717 Prevention of Crime Act. ventive detention shall be confi
Section 13,(2)

in any prison or part of a
prison which the Govt. may
set apart for the purpose.

3. The Govt. shall appoint
for every such prison or part
of a prison so set apart a
Bd. of Visitors with such powers
as they may prescribe. The Bd.
so appointed shall hold office
for three years their powers will

Rule 13 of the Rules
made the Prisons & the
Prevention of crimes Act

not be affected by vacancies. The Govt shall as soon as possible, fill any vacancy by making a new appointment. At their first meeting they shall appoint a Chairman One or more of them shall visit the prison once a month and they shall meet as a Bd. as often as possible. They shall hear and adjudicate on such offences on the part of the prisoners as may be referred to them by the I.G. of Prisons, and they shall investigate any complaint which a prisoner may desire to make to them, and, if necessary, report the same to the I.G. with their

76R Rule 13 of the Rules under the Prisons Act & the Prevention of Crime Act

opinion. They shall have free access to every part of the prison and may see any prisoner in private, inspect the diets and examine any of the books. They shall bring any abuses to the immediate notice of the I.G. and in cases of urgency they may make recommendations in writing which the Supdt. shall carry out pending the decision of the I.G. They shall keep minutes of their proceedings, and make an annual report to the Govt. at the beginning of each year.

Rule 13 of the Rules under the Prisons & Prevention of Crime Act.

7 (R

4. Persons undergoing preventive detention shall be

divided into three grades,
Ordinary, Special and Disciplin-
H R Rule 1 of the Rules under the Prisons & Prevention of Crimes Act. -nary. On entering upon pre-
-ventive detention, they shall be
place in the Ordinary grade.
5. After every six months
passed in the Ordinary grade
with exemplary conduct a
prisoner who has shown zeal
and industry in the work
! R Rule 2 of the same Rules assigned to him may be award-
-ed a certificate of industry
and conduct. Four of these certi-
-ficates will entitle him to
promotion to the Special grade.
With each certificate a prisoner
will receive a good conduct
stripe carrying privileges or

all payment.

6. A prisoner may be placed in the Disciplinary Grade by order of the Supdt. as part of a punishment for misconduct, or because he is known to be exercising a bad influence on others, and may be kept there so long as may be necessary in the interests of himself and of others. While in the Disciplinary Grade he may be employed in association, but he will not be associated with others except at labour.

71R Rule 3 of the same

7. Prisoners will be employed either at useful trades in which they will be instructed,

Rule 4 of the same inter

or at agricultural work, or in the service of the prison, and those in the Ordinary and Special grades will be allowed to earn gratuity by their work. They will be allowed to spend a portion of their gratuity in the purchase of addition to their dietary, or to send it to their families, or to accumulate it for use on their discharge.

8. A prisoner who is in Hospital or medically unfit for full work will, on the recommendation of the Medical Officer who will certify that the disability was genuine and not caused

71 R Rule 5 of the same rules

by the prisoners own fault, be credited with gratuity in proportion to his earnings when in health, or calculation on his general disposition to work, coupled with good conduct.

9. A canteen will be opened in the prison at which prisoners in the Ordinary and Special grades may purchase articles of food, and other small articles at prices to be fixed by the V.G. The cost of such articles will be charged against each prisoner's gratuity. The privilege of purchasing articles in the canteen may at any time be limited or withdrawn

71K Rule 69 of the same rules

by the Supdt.

10. Prisoners who have obtained their certificates of industry will be eligible to have a garden allotment assigned to them which they may cultivate at such times as may be prescribed. The produce of these allotments will, if possible, be purchased for use in prisons at market rates and the proceeds credited to the prisoner.

Rule 17 of the same Rules

11. Prisoners in the Ordinary grade may be allowed to associate at meal times and after [illegible] receiving their second certificate, in

Rule 9 of the same F.C.K. Rules.

the evening also. Prisoners in the Special grade may also be allowed to associate at meal times and in the evening, and shall be allowed such additional relaxations of a literary and social character as may be prescribed from time to time.

12. Any of the privileges prescribed in these special rules or gratuity earned may be forfeited for misconduct. A prisoner has no legal claim upon his gratuity, which will be expended for his benefit or may be withheld at the discretion of the Supt.

71R. Rule 9 The same

13. Prisoners shall receive

the dicta which the D. G. may

7 C R — Rule 11 of the same Rules — prescribe from time to time.

14. Prisoners will be

allowed to write and receive

7 C R — Rule 12 of the same Rules — a letter and to receive a visit

at fixed intervals according

to their grades.

15. The Govt. shall, once

at least in every three years

during which a person is

7 I — Section 16 (1) Prevention of Crime Act, 1908 — detained in custody under a

sentence of preventive detention

take into consideration the

condition, history, and circumst

of that person with a view to

determining whether he shall

be placed out on license and

if so on what conditi

16. The Govt. may at any time discharge on license a person undergoing preventive detention if satisfied that there is a reasonable probability that he will abstain from crime and lead a useful and industrious life or that he is no longer capable of engaging in crime, or that for any other reason it is desirable to release him from confinement in prison.

H I Prevention of Crime Act Section 14,(2)

17. A person so discharged on license may be discharged on probation and on such conditions as may be specified in the license.

I I Prevention of Crime Act section 14, (3)

18. The I. G. of Prisons shall

report periodically to Govt on the conduct and industry of persons undergoing preventive detention, and their prospects & probable behaviour on release and for this purpose shall be assisted by a committee consisting of such members of the Bd. of Visitors and such others/persons either ex officio as the Govt. may from time to time appoint.

Prevention of Crime Act Section 14, (4)

19. Every such committee shall meet once a quarter for the purpose of personally interviewing persons undergoing preventive detention and forward to the I.G. of Prisons such report as may be necessary for his

Rule 14 of the Rules under Prevention of Crimes Act.

assistance in advising Govt as to the prospects and probable behaviour of prisoners after discharge and may at any other times hold such meetings, and make such special reports respecting particular cases, as they may think necessary.

7 I Prevention of Crime Act Section 14, (5)

20. A licence under these rules may be revoked at any time by the Govt., and when a licence has been revoked, the person to whom the licence related shall return to the prison and, if he fails to do so, may be apprehended without warrant and taken to prison.

7 I Prevention of Crime Act Section 15, (2)

21. If a person absent from prison under such a license commits any breach of the conditions contained in the license, he shall be considered thereby to have forfeited the license, and shall be taken back to prison.

7 & 7 Prevention of Crime Act Section 15, (3)

22. A Court of summary jurisdiction for the place where the prison from which a person has been discharged on license is situate or where such a person is found, may, on information on oath that the license has been forfeited under the foregoing rule, issue a warrant for his apprehension,

17. Prevention of crime Act Section 15, (4)

and he shall on apprehension, be brought before a court of summary jurisdiction which, if satisfied that the licence has been forfeited, shall order him to be remitted to preventive detention and may commit him to any prison within the jurisdiction of the court until he can conveniently be removed to a prison or part of a prison set apart for the purpose of the confinement of persons undergoing preventive detention.

23. A person whose licence has been revoked or forfeited may on his return

.7 & R

Rule 15 of the Rules under Prisons & Prevention of Crimes Act 1911

to prison be placed and kept
in the Disciplinary Grade
for such length of time as
the Bd. of Visitors shall think
necessary.

24: The time during which
a person is absent from prison
under a license shall be treated
as part of the term of preventive
detention.

Provided that, where
such person has failed to
return on the license being
forfeited or revoked, the time
which elapses after his failure
so to return shall be excluded
in computing the unexpired
residue of the term of preventive

H Z — Prevention of Crime Act Section 15, (5)

dulin lion

25 Without prejudice

to any other powers of discharge,

the Govt. may at any time

discharge absolutely any

person discharged conditionally

Prevention of Crime Act, Section 16

on license and shall so

discharge him at the expira-

-tion of five years from the

time when he was first dis-

-charged on license if satisfied

that he has been observing the

conditions of his license and

abstaining from crime.

R. S. 12]

General and Revenue Secretariat.

Pris File No. 35 of 1913-14

Serial No.

Before effecting any alteration in the existing law or rules the Ch. Com. and the D.G. of Prisons will have to be consulted.

Subd. for orders.

B.S. 4.9.14 NM

The Scheme proposed involves the introduction of a new Section both into the I.P.C. & Cr.P.C., that in the I.P.C. being similar to S 10 of the English Prevention of Crimes Act & the Amendment in the Cr.P.C. being consequential and also based on English law. Written involves the issue of Executive Rules for observance of the Jail authorities. As suggested by the Hon'ble it will be desirable to cancel the Chief Court & the D.G. Prisons of the proposals. The case may be referred to them U.O. so that they may have the full facts before them when recording their views.

Seen 7.9.14

Please mark against the draft rules whence Secy have been taken:

Done 9.9

Resubd. with necessary marking

B.S. 4.9.14 NM

Secy) SPR 3/6

GPB—30,000—7-11-13

G. R. S. 12]

General and Re
Secretariat

Dio File No. 35 of 1913-14

No.

Mr. S P. Rajagopalachar asks Govt's construction of the rule on a more

June 1916

Secbd. for orders.

B.G. (1913-7-16)

Please let me have the new Manual provides for similar cases.

Submitted. Such cases are not covered by the provisions of the New Jail Manual.

June 19-6-16. As no action seems called for at present, the papers may be filed if so ordered.